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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 ROBERT JOSEPH LUMPKIN,

8 Plaintiff,

9 v.

10 DEPUTY SALT, *et al.*,

11 Defendants.

Case No. C18-330-RSM-JPD

ORDER GRANTING DEFENDANTS'  
MOTION FOR SANCTIONS

12  
13 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before  
14 the Court at the present time on defendants' motion for sanctions. Defendants seek the  
15 imposition of sanctions against plaintiff based on threatening statements plaintiff made to  
16 defendants' counsel during a telephone conference regarding discovery matters. (*See* Dkt. 19 at  
17 1.) Defendants' counsel, Katherine Bosch, initiated the call in order to discuss video  
18 surveillance footage which plaintiff had requested in discovery. Present for the call were Ms.  
19 Bosch, her legal assistant Cynthia Ryden, plaintiff, and his prison counselor Helen Donatacci.<sup>1</sup>  
20 (Dkt. 20, ¶ 5; Dkt. 21, ¶ 3; Dkt. 22, ¶ 2.)  
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22 <sup>1</sup> The phones at both ends of the call were on speakerphone so the conversation could be heard by all four  
23 individuals present for the call. (*See* Dkt. 20, ¶ 5; Dkt. 21, ¶ 3; Dkt. 22, ¶ 2.)

1 After discussing the discovery issue, and some other apparently unrelated issues, plaintiff  
2 asked Ms. Bosch “why Defendants were ‘fighting’ this case,” and said something to the effect  
3 that “what happened to him when his jeans were cut off was not right.” (*See* Dkt. 20, ¶ 6; Dkt.  
4 22, ¶¶ 4, 5.) Counsel advised plaintiff that she was not going to debate the merits of the case  
5 with him, and that the purpose of the phone call was solely to discuss discovery. (*See id.*) At  
6 that point, plaintiff made the statements which form the basis of defendants’ motion for  
7 sanctions.

8 According to Ms. Bosch, plaintiff said something along the lines of “You wouldn’t want  
9 that to happen to your kids, for your kids to have their clothes cut off of them.” (Dkt. 20; ¶ 6.)  
10 Ms. Donatacci, and Ms. Ryden, who also heard this exchange, recalled plaintiff’s statement  
11 slightly differently. Ms. Donatacci recalls hearing plaintiff say “How would you like it if your  
12 kids got stabbed with a pair of scissors?” (Dkt. 21; ¶ 3.) And, Ms. Ryden recalls hearing  
13 plaintiff say “I hope that don’t happen to you or your kids.” (Dkt. 22, ¶ 5.)

14 Ms. Bosch warned plaintiff, who has a history of making threats to corrections deputies,  
15 that if his statement was meant as a threat it would not be tolerated. (*See* Dkt. 20, ¶ 8; Dkt. 21, ¶  
16 3; Dkt. 22, ¶ 5.) Ms. Donatacci asked plaintiff if he wanted to go to segregation. (*Id.*) Plaintiff  
17 then repeated the statement at which point Ms. Bosch terminated the call. (*See id.*) Ms.  
18 Donatacci wrote an initial serious infraction report regarding this incident and plaintiff was taken  
19 to segregation pending a hearing on the infraction. (Dkt. 21, ¶ 4 and Ex. A.)

20 A federal court “has the inherent authority to impose sanctions for bad faith, which  
21 includes a broad range of willful improper conduct.” *Fink v. Gomez*, 239 F.3d 989, 992 (9<sup>th</sup> Cir.  
22 2001). A specific finding of bad faith must “precede any sanction under the court’s inherent  
23

1 powers.” *United States v. Stoneberger*, 805 F.2d 1391, 1393 (9<sup>th</sup> Cir. 1986) (citing *Roadway*  
2 *Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980). Defendants argue that plaintiff’s statement to  
3 counsel was willful and was made with the intent to harass or intimidate counsel in an effort to  
4 dissuade her from pursuing defense of this lawsuit, and they ask the Court to make a specific  
5 finding to this effect. (Dkt. 19 at 5.) They further argue that the Court should assess sanctions in  
6 the form of an order relieving counsel from the obligation of having to meet and confer with  
7 plaintiff regarding discovery disputes or issues that may occur as this litigation proceeds, and  
8 granting permission to conduct all future discovery in writing.<sup>2</sup> (*Id.*) Plaintiff has filed no  
9 response to defendants’ motion which the Court, in this instance, construes as an admission that  
10 the motion has merit. *See* LCR 7(b)(2).

11 Based on the foregoing, the Court hereby finds and ORDERS as follows:

12 (1) The unrefuted testimony of Ms. Bosch, Ms. Donatacci, and Ms. Ryden establishes  
13 that plaintiff’s statement to Ms. Bosch was threatening in nature, that it was willful, and that it  
14 was made for the purpose of harassing or intimidating Ms. Bosch, and the Court specifically  
15 finds that plaintiff acted in bad faith in making that statement.

16 (2) The Court concurs with defendants that there are limited options available to the  
17 Court under the circumstances and that their proposed sanctions are reasonable. Accordingly,  
18 defendants’ counsel is hereby relieved of the obligation to meet and confer with plaintiff  
19 regarding discovery disputes, or any other issues that may occur during this litigation, and  
20 counsel is granted permission to conduct all future discovery in writing. This sanction does not  
21 relieve either party of the obligation to attempt to resolve discovery disputes prior to seeking

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22 <sup>2</sup> Defendants note that because plaintiff is indigent and proceeding *in forma pauperis* the imposition of  
23 monetary sanctions would likely be futile and unenforceable. (Dkt. 19 at 5-6.)

1 Court intervention as required by Fed. R. Civ. P. 37(a)(1), it merely relieves them of the  
2 obligation to do so in person or via telephone conference.

3 (3) The Clerk is directed to send copies of this Order to plaintiff, to counsel for  
4 defendants, and to the Honorable Ricardo S. Martinez.

5 DATED this 22nd day of August, 2018.

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7 JAMES P. DONOHUE  
8 United States Magistrate Judge  
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